

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: January 13, 2000

RE: Authorization to File Orders of Rulemaking With the Office of Secretary of State


CASE NO: AX-2000-125

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the Orders of Rulemaking with the Office of Secretary of State, to wit:

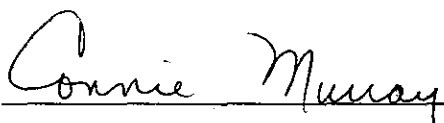
4 CSR 240-2.130 Evidence




Sheila Lumpe, Chair



Harold Crumpton, Commissioner



Connie Murray, Commissioner



Robert Schemenauer, Commissioner



M. Dianne Drainer, Vice Chair

1 change ^{Supp} 1999 not Supp 1998.

Administrative Rules Stamp

RECEIVED

JAN 21 2000
SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISION

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-2.130
Diskette File Name 2.130 rule (Word 97 format)
Name of Person to call with questions about this rule:
Context Shelly A. Register Phone 573-751-7497 FAX 573-751-1847
Data Entry Lonnell Boyce Phone 573-751-3350 FAX 573-751-1847
Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO

Statutory Provision for Rulemaking
Authority §§ 386.410 Provide Most Current RSMo Year Supp. 1998

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages
 Cover Letter _____
 Affidavits _____
 Cost Statements _____
 Public Entity Fiscal Note OTHER _____
 Private Entity Fiscal Note _____

C. RULEMAKING ACTION TO BE TAKEN
 Emergency Rulemaking, Must Specify Effective Date _____
 Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)
 Order of Rulemaking (MUST complete page 2 of this transmittal)
 Withdrawal (Rule, Amendment, Rescission or Emergency)
 Rule Action Notice
 In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-2.130

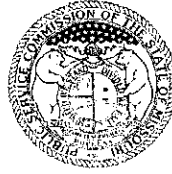
1a. Effective Date for the Order
Statutory 30 days or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?
YES NO _____

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

- In Section (6), "Date Testimony Prepared:" was added to the list of information to be provided on the upper right-hand corner of a cover sheet.
- In Section (6), the sentence "The prepared testimony of each witness shall be filed separately" was revised to read "The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath."
- In Section (6), the Notice of Rulemaking inadvertently omitted the $\frac{1}{2}$ symbol in the following sentence and it should be reinserted to read as follows: "(6) Prepared testimony shall be typed or printed, in black type on white paper eight and one-half inches by eleven inches (8 $\frac{1}{2}$ " x 11")";
- In Section (10), the Notice of Rulemaking inadvertently omitted the $\frac{1}{2}$ symbol in the following sentence and it should be reinserted to read as follows: "Exhibits shall be legible and, unless otherwise authorized by the commission, shall be prepared on standard eight and one-half by eleven inch (8 $\frac{1}{2}$ " x 11")-size paper."
- In Section (15), the phrase ", except as permitted otherwise by these rules" was added to the end of the second sentence in that section.
- In Section (17), the phrase "seven (7)" was deleted and the phrase "ten (10)" was inserted in its place.



Missouri Public Service Commission

Commissioners
SHEILA LUMPE
Chair
HAROLD CRUMPTON
CONNIE MURRAY
ROBERT G. SCHEMENAUER
M. DIANNE DRAINER
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January 21, 2000

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLLIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Orders of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 21st day of January, 2000.

Rules: 4 CSR 240-2.010 – Definitions
4 CSR 240-2.015 – Waiver of Rules
4 CSR 240-2.040 – Practice Before the Commission
4 CSR 240-2.050 – Computation of Time
4 CSR 240-2.060 – Applications
4 CSR 240-2.065 – Tariff Filings Which Create Cases
4 CSR 240-2.070 – Complaints
4 CSR 240-2.075 – Intervention
4 CSR 240-2.080 – Pleadings, Filing, and Service
4 CSR 240-2.085 – Protective Orders
4 CSR 240-2.090 – Discovery and Prehearings
4 CSR 240-2.100 – Subpoenas
4 CSR 240-2.110 – Hearings
4 CSR 240-2.115 – Nonunanimous Stipulations and Agreements
4 CSR 240-2.116 – Dismissal
4 CSR 240-2.120 – Presiding Officers
4 CSR 240-2.125 – Procedures for Alternative Dispute Resolution
4 CSR 240-2.130 – Evidence
4 CSR 240-2.140 – Briefs and Oral Argument
4 CSR 240-2.150 – Decisions of the Commission
4 CSR 240-2.160 – Rehearings or Reconsideration
4 CSR 240-2.180 – Rulemaking
4 CSR 240-2.200 – Small Company Rate Increase Procedure

Honorable Rebecca McDowell Cook
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Statutory authority: Section 386.410, RSMo Supp. 1998

Effective date of the rules: thirty days after publication in the *Code of State Regulations*

Missouri Public Service Commission Case Nos.: AX-2000-108 through AX-2000-128, and
AX-2000-130 through AX-2000-131

If there are any questions, please contact: *(These rules are assigned to several regulatory law judges. Please refer to the transmittal form for the name, phone number and fax number of the regulatory law judge assigned to a particular rule.)*

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:jp

Enclosures: Packets for 23 Orders of Rulemaking
Orders of Rulemaking in Word 97 format on 3-1/2" diskette

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1998, the commission adopts a rule as follows:

4 CSR 240-2.130 Evidence is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2334-2335). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments were received during the comment period.

COMMENT: One comment was received suggesting that the Commission clarify Section (16). Section (16) states "All testimony shall be taken under oath". The comment refers to the affidavits which are often attached to prefiled written testimony. If an affidavit is not attached to the prefiled testimony, Section (16)'s requirement may cause difficulty. Requiring all testimony to be given under oath may be a problem because the witnesses who have filed prefiled testimony are not always present, especially when no cross examination is expected or when the parties have entered into a stipulation which includes the admission of evidence. It is suggested that Section (16) not be applied to prefiled testimony and that Section (16) does not preclude the acceptance of prepared testimony into an evidentiary record, by stipulation, that is not under oath.

RESPONSE: The Commission has considered these comments and finds that all testimony, oral or written, should be taken under oath. Therefore, the Commission has made changes to Section (6) of this rule to require the attachment of an affidavit in which the witness shall recite the oath or affirmation as to the testimony given in the written document. The Commission also added to Section (6) the requirement that the prefiled testimony cover sheet provide the date the testimony is prepared for clarification purposes.

COMMENT: One comment was received suggesting that the proposed time period of seven days to object to a late-filed exhibit be changed to ten days for the reasons mentioned in other cases commenting on these proposed rules regarding the seven day response period.

RESPONSE: The Commission has considered these comments and the Commission finds that the period for filing objection to a late-filed exhibit should be changed to ten (10) calendar days to give parties adequate time to file an objection, if they wish to do so.

COMMENT: One comment received indicated support for the proposed changes which make only minor test changes in the rule.

RESPONSE: The Commission has considered these comments and finds that no additional changes are requested.

COMMENT: The Commission amended Section (15) slightly for clarification purposes to ensure that these rules were consistent.

COMMENT: It was noted that the numerical references to the size of paper in Sections (6) and (10) were published in the Notice of Rulemaking incorrectly omitting the ½ symbol. These sections will be reprinted in the Order of Rulemaking for correction.

4 CSR 240-2.130 Evidence

PURPOSE: This rule prescribes the rules of evidence in any hearing before the commission.

(6) Prepared testimony shall be typed or printed, in black type on white paper eight and one-half inches by eleven inches (8 ½" x 11"); it shall be double-spaced and pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1; it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form; and it shall be filed in sufficient number of copies as required by order of the commission, observing the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Printing on both sides of the page is encouraged. Schedules shall bear the word "schedule" and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule. All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No. (To be marked by the hearing reporter)
Issue: (If known at the time of filing)
Witness: (Full name of witness)
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)
Sponsoring Party:
Case No.:
Date Testimony Prepared:

The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath. Prepared testimony shall be filed on line-numbered pages. Testimony which addresses more than one (1) issue shall contain a table of contents.

* * *

(10) Exhibits shall be legible and, unless otherwise authorized by the commission, shall be prepared on standard eight and one-half by eleven inch (8 ½" x 11")-size paper. The sheets of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

* * *

(15) Evidence for which a claim of confidentiality is made shall be filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence, except as permitted otherwise by these rules.

* * *

(17) All late filed exhibits shall be submitted by simultaneously providing a copy to all parties, and by submitting an original and eight (8) copies to the presiding officer. Unless otherwise ordered, any objection to the admission of a late filed exhibit must be filed within ten (10) days of the date the exhibit was tendered.